Supreme Court, U.S.
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No. _____

In The
Supreme Court of the United States

FARAH ADE MOHAMED, *et al.*,

Petitioners,

v.

AWARE DAUD, *et al.*,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Does Federal Rule of Appellate Procedure 7 permit a court to require Petitioners to post security in the form of a cost bond for $25,000 even though Respondents already held more than $25,000 of Petitioners' money as a result of the litigation, the low-income Petitioners could not secure the 100% collateral required to obtain the bond, and this failure to post such duplicative security resulted in the dismissal of a meritorious appeal that sought to vindicate Petitioners' Title VII right to freedom from religious-based discrimination?

PARTIES TO THE PROCEEDING

A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

***Petitioners*:** Farah Ade Mohamed; Rashid Mohamed Osman; Asli Hassan Adan; Leyla S. Adow; Deeqa D. Ali; Khadro Muse Ali; Muse A. Ali; Nadifo M. Hashi; Abdikhadar Ahmed Jama; Abdinasar Hassan Khalif; Mohamed S. Mohamed; Nimo Y. Yussuf; Abdiqani Yusuf; Naimo Mohamed Yusuf; Susan Guhad; Abdulkadir Haji; Masbal A. Ismail; Abdifatah Abdullahi Isse; Keyro Hassan; Ayan M. Yussuf; Awale Hussein; Diney Abdi; Fowsia Jama; Mohamed Abdi; Mohamed Omar; Mohamed Hirsi; Abdi-haye Osman Hanshi; Daud D. Roble; Mohamed H. Yusuf; Yusuf Adan Abdi; Balos Yusuf; Jama Abokar; Nimo Omar; Farhia Yusuf; Khamar Ahmed Malin; Amina Arale; Mariam Mohamed; Sahro Moalin; Ifrah Abdi Jama; Hibaq Abdi; Ayan M. Salah; Saida Mohamud Hassan; Khadra Omar; Safiya Abdule; Amina Sugule; Asha Yusuf; Hinda Dubat; Fartun Diriye; Maryan Guhad; Khadra Ali; Bashaal Mahamed Hussein; Ahmednoor Sahal; Bashir Dube; Fahmo H. Yusuf; Hussein Yusuf; Ahmed Hassan Arte; Mohamed O. Abdi; Mohamed Y. Abdi; Abdikadir Diriye.

***Respondents*:** Aware Daud; Khadija Jama; Abdiaziz Ali Abdi; Sahra Farah; Anab Ibrahim; Fowsiya Gelle; Kiin Farah; Lul Esse Hersi; Kasha Anna Sobania; Waris Barre; Issak Horor; Equal Employment Opportunity Commission; Gold'n Plump Poultry, Inc.; The Work Connection, Inc.

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PETITION FOR WRIT OF CERTIORARI

Petitioners respectfully petition for a writ of certiorari to review a decision of a United States Court of Appeals for the Eighth Circuit.

OPINIONS AND ORDERS BELOW

The October 27, 2009 order of the U.S. Court of Appeals for the Eighth Circuit for which this petition is filed is unreported, and is reproduced at Appendix ("App.") 1-2. The January 15, 2010 order of the U.S. Court of Appeals for the Eighth Circuit denying rehearing of the renewed motion concerning the October 27, 2009 order is unreported, and is reproduced at App. 67-68.

The March 31, 2009 order and Judgment of the U.S. District Court for the District of Minnesota approving the Class Action Settlement Agreement is unreported, and is reproduced at App. 20-57. The July 28, 2009 order of the U.S. District Court for the District of Minnesota granting the motion to require a Federal Rule of Appellate Procedure Rule 7 bond is unreported, and is reproduced at App. 58-63. The September 28, 2009 order of the U.S. District Court for the District of Minnesota denying the motion to modify the Rule 7 bond is unreported, and is reproduced at App. 64-66.

JURISDICTION

The order of the U.S. Court of Appeals for the Eighth Circuit sought to be reviewed was entered on October 27, 2009. A petition for rehearing was timely filed, and the order denying the rehearing was entered on January 15, 2010. This petition is timely under Supreme Court Rule 13.3 because it is being filed within 90 days of the denial of the rehearing. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. Rule 7 of the Federal Rules of Appellate Procedure states, in relevant part:

> In a civil case, the district court may require an appellant to file a bond or provide other security in any form and amount necessary to ensure payment of costs on appeal. . . .

2. Title 42, Section 2000e-2 of the U.S. Code (Title VII) states, in relevant part:

> (a) Employer practices
>
> It shall be an unlawful employment practice for an employer –
>
> (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or

privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

. . .

3. Rule 23 of the Federal Rules of Civil Procedure states, in relevant part:

(a) **Prerequisites.** One or more members of a class may sue or be sued as representative parties on behalf of all members only if:

(1) the class is so numerous that joinder of all members is impracticable;

(2) there are questions of law or fact common to the class;

(3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and

(4) the representative parties will fairly and adequately protect the interests of the class.

(b) Types of Class Actions. A class action may be maintained if Rule 23(a) is satisfied and if:

. . .

(2) the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole; or

(3) the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. The matters pertinent to these findings include:

(A) the class members' interests in individually controlling the prosecution or defense of separate actions;

(B) the extent and nature of any litigation concerning the controversy already begun by or against class members;

(C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and

(D) the likely difficulties in managing a class action.

(c) Certification Order; Notice to Class Members; Judgment; Issues Classes; Subclasses.

. . .

(2) Notice.

(A) For (b)(1) or (b)(2) Classes. For any class certified under Rule 23(b)(1) or (b)(2), the court may direct appropriate notice to the class.

(B) For (b)(3) Classes. For any class certified under Rule 23(b)(3), the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice must clearly and concisely state in plain, easily understood language:

(i) the nature of the action;

(ii) the definition of the class certified;

(iii) the class claims, issues, or defenses;

(iv) that a class member may enter an appearance through an attorney if the member so desires;

(v) that the court will exclude from the class any member who requests exclusion;

(vi) the time and manner for requesting exclusion; and

(vii) the binding effect of a class judgment on members under Rule 23(c)(3).

STATEMENT OF THE CASE

This case raises questions about whether Federal Rule of Appellate Procedure 7 should be used to bar a low-income party's access to the federal appellate process by denying Petitioners the ability to offset the Rule 7 bond with money that is owed to them by Respondents, that is in Respondents' possession, and that is sufficient to cover the bond.

In this case, the Petitioners filed an appeal with the Eighth Circuit Court of Appeals. The District Court then exercised its discretion, in response to a motion, to order that Petitioners post a Rule 7 bond, and, in a later order, denied a motion to offset the bond with money in Respondents' possession. The Eighth Circuit Court of Appeals, in subsequent orders, denied, without explanation, Petitioners' motions for offset in lieu of a bond and then dismissed the appeal.

By refusing to order an offset in lieu of a bond, the Eighth Circuit decided an important and unsettled question of federal law and did so in a way that conflicted with relevant decisions of this Court.

I. Petitioners

Petitioners are 59 class members who object to a class-action settlement on the grounds that the settlement violated their fundamental rights under Federal Rule of Civil Procedure 23. Petitioners, who have both limited financial ability and assets, were unnamed Plaintiffs in the underlying class action and were Objectors-Appellants on appeal. App. 59-61.

II. The Class-Action Lawsuit and Settlement

This action commenced on October 6, 2006 with a class-action Complaint filed in the United States District Court for the District of Minnesota. Federal jurisdiction was appropriate pursuant to 28 U.S.C. § 1331. The class members were then current and former Muslim employees at Gold'n Plump Poultry, Inc. ("Gold'n Plump") who alleged that Gold'n Plump, among other things, failed to properly provide them with Title VII religious accommodations because Gold'n Plump did not provide them with time to pray at work. On November 7, 2008, as part of a settlement, the District Court certified the class under Federal Rule of Civil Procedure 23(a) and (b)(2) and gave preliminary settlement approval.

On March 31, 2009, the Honorable Magistrate Judge Jeanne J. Graham of the United States District Court for the District of Minnesota issued final approval of the settlement and entered judgment. App. 20-53; 54-57. The settlement, as drafted, involved both equitable and monetary relief. Specifically, the settlement agreement provided class members with

equitable relief in the form of "reasonable accommodation" for their prayer practices and also awarded $365,000 in monetary damages for distribution among class members and, separately, $985,000 in attorneys' fees to class-action counsel. App. 49; 41; 50; Petitioners' Eighth Circuit Appendix ("8th Cir. App.") *A.1-22*.

Only the 11 named plaintiffs ("11 Named Plaintiffs") signed the settlement agreement – but 10 of the 11 Named Plaintiffs relied on interpreters in signing the agreement and the settlement agreement was not translated for them. The agreement did not provide class members – including Petitioners – the right to opt out of the settlement pursuant to Fed. R. Civ. P. 23(b)(3). Because the settlement did not address their claims under Title VII, and because Petitioners were not provided with the right to opt out of the settlement, Petitioners appealed the settlement to the Eighth Circuit Court of Appeals.

III. The Eighth Circuit Appeal

Petitioners filed a notice of appeal to the Eighth Circuit Court of Appeals on May 29, 2009, in order to protect their Title VII rights, as well as their fundamental due process rights, codified in Federal Rule of Civil Procedure 23.

On July 14, 2009, the 11 Named Plaintiffs, moved the District Court for an order requiring Petitioners to post a cost bond under Rule 7. *See* App. 59. Respondent The Work Connection, Inc. ("TWC") brought a similar motion on July 16. *See* App. 59. On July 28, 2009, the District Court granted that motion and

ordered that Petitioners post a $25,000 appeal cost bond. The District Court did acknowledge that Petitioners "have limited financial ability to post a bond." App. 60. However, the Court then found that "the weight of this factor is counterbalanced by the Court's ability to reduce the amount requested and lessen any adverse effect on their appeal or their ability to post the bond." App. 60.

In articulating its decision to order the bond, the District Court speculated that "the cost of the bond . . . [would] be borne by sixty-three appellants[ ]"; that there was "a substantial risk that the appellants would not pay the appellees if they lose on appeal[ ]. . . ." because "appellants are mostly short-term workers and recent emigrants to the United States who probably have not accumulated many assets[ ]"; that "objections [to the class action settlement] were untimely and largely unsupported by any factual or legal basis[ ]"; and, that "appellants have not acted in bad faith or vexatiously." App. 60-61. The court required that a bond be posted within 30 days of the order. App. 63.

On August 28, 2009, after unsuccessfully making good-faith efforts to obtain the cost bond's 100% collateral, Petitioners moved the District Court to modify the bond order to allow them to post security in lieu of a bond. Petitioners provided evidence that settlement distributions for 19 of the 59 Petitioners would provide security for a substantial majority of the bond amount. 8th Cir. App. at *A.73*. Petitioners also provided evidence that Respondents Gold'n Plump and TWC were already holding that money. *Id.*; *Id.* at *A.87-183*. Petitioners thus asked the

District Court to accept their settlement proceeds, already in Gold'n Plump's and TWC's possession, as security in lieu of the bond because, despite their significant and good-faith efforts, Petitioners were unable to raise enough money to post bond. *Id.* at *A.53-54; A.62; A.63-65; A.73-74.*

On September 9, 2009, the 11 Named Plaintiffs filed a Motion to Dismiss Petitioners' appeal for failure to file a cost bond. *Id.* at *A.66-71.*

On September 28, 2009, despite having stated earlier that the District Court had the ability "to reduce the amount required and lessen any adverse effect on . . . [Petitioners'] appeal of their ability to post the bond . . . [,]" the District Court nevertheless denied Petitioners' August 28, 2009 motion to modify the bond order. App. 64-66. The District Court provided no explanation as to why a $25,000 bond was needed when Respondents Gold'n Plump and TWC had so much of Petitioners' money. App. 65 (noting, in part, that "the relief sought is not supported by facts or law").

On October 14, 2009, the Eighth Circuit issued an order, in response to the 11 Named Plaintiffs' September 9 motion, stating "that this appeal will be dismissed if the $25,000 appeal bond is not paid within ten days of the date of this order." App. 4.

Petitioners continued their efforts to obtain a bond so that the merits of their appeal could be heard but were unsuccessful in doing so. On October 23, 2009, they filed a motion with the Eighth Circuit Court of Appeals seeking an order requiring an offset in lieu of the $25,000 cost bond. Petitioners again provided undisputed evidence that certain Respondents held

and owed to them more than the cost bond amount. 8th Cir. App. at *A.78-79*; *A.83-183*. On October 27, 2009, the Court denied that motion in a two-sentence order – again without any explanation for the ruling – noting that Petitioners had five additional days to post the bond or the appeal would be dismissed. App. 2.

On November 2, 2009, Petitioners filed a Renewed Motion for offset in lieu of bond with the Eighth Circuit Court of Appeals. Petitioners again explained that Respondents Gold'n Plump and TWC held and owed to them more than the cost bond amount. 8th Cir. App. at *A.185-186*. Those settlement proceeds, in excess of $29,000, thus more than amply secured all Respondents for $25,000 in costs the court ordered to be posted. *Id.* at *A.87-183*.

In a two-sentence Judgment entered on November 10, 2009, the Eighth Circuit Court of Appeals denied Petitioners' Renewed Motion for offset and granted the 11 Named Plaintiffs' September 9, 2009 Motion to Dismiss. App. 7. The Eighth Circuit, again, provided no explanation for its ruling.

On December 22, 2009, Petitioners then asked the Eighth Circuit for a panel rehearing or rehearing en banc of the Judgment entered on November 10, 2009. This request was denied on January 15, 2010, in a two-sentence order. App. 68. The mandate was issued on January 21, 2010.

No explanation has ever been given as to why the greater settlement proceeds held by certain Respondents and owed to Petitioners is not enough to secure the potential requirement that Petitioners pay $25,000 to Respondents.

The 59 class members now petition this Court for a review of the Eighth Circuit's October 27, 2009 order denying their motion to offset the $25,000 Rule 7 bond with amounts sufficient to cover the bond that were already in Respondents' possession.

REASONS FOR GRANTING THE WRIT

Under Federal Rule of Appellate Procedure 7, the purpose of a bond, or other form of security, is "to ensure payment of costs on appeal." Fed. R. App. P. 7. When such costs are already secured, however, an order – like the one issued here by the Eighth Circuit – denying offset in lieu of a bond, amounts to nothing less than a double-bond requirement imposed as a prerequisite to an appeal, which this Court has determined is unconstitutional. *Lindsey v. Normet*, 405 U.S. 56, 74 (1972) (noting that "the double-bond prerequisite for appealing an FED [Forcible Entry and Wrongful Detainer] action violates their right to the equal protection of the laws"). This requirement raises serious concerns regarding a party's access to the federal appellate process, especially when an appellant has limited (or even moderate) financial means.

As further discussed below, in issuing its order denying an offset in lieu of a bond (despite the fact that such costs were already secured) the Eighth Circuit: (1) has decided an important question of federal law which has not been, but should be, settled by this Court; and, (2) has decided an important federal question in a way that conflicts with relevant decisions of this Court. Accordingly, the Writ should be granted.

I. The Eighth Circuit Has Decided An Important Question Of Federal Law – Without Any Explanation – Which Has Not Been, But Should Be, Settled By This Court.

In deciding, without explanation, that Petitioners could not offset in lieu of a bond, despite the fact that Respondents' costs were already secured, the Eighth Circuit has defied the purpose of Rule 7, has created barriers to certain future litigants' ability to appeal, and has denied Petitioners a right to appeal a meritorious claim. The Court of Appeals has also prevented review of a class-action settlement strategy that provides future class-action defendants with a blueprint for circumventing the due process protections of Rule 23(b)(3). This Court should decide whether a Circuit Court of Appeals can bar access to the appellate process in such fashion under Federal Rule of Appellate Procedure 7.

A. The Eighth Circuit's Order Establishes a Double-Bond Requirement, Despite the Fact that the Purpose of Rule 7 Already Had Been Satisfied.

Under Federal Rule of Appellate Procedure 7, the purpose of a bond, or other form of security, is "to ensure payment of costs on appeal." Fed. R. App. P. 7. Here, Respondents never disputed the fact that they already had more than enough of Petitioners' money to satisfy Rule 7's purpose. At the time certain Respondents filed their motion for a cost bond, Respondents Gold'n Plump and TWC were already holding more than $25,000 of Petitioners' money – money that

could be used to satisfy Petitioners' costs should they lose on appeal. 8th Cir. App. at *A.9*; *A.87-183*. Thus, the purpose of Rule 7 already had been satisfied well before certain Respondents sought a bond.

Because such Rule 7 costs already were secured, an order – such as the one issued here by the Eighth Circuit – denying offset in lieu of a Rule 7 bond amounted to nothing less than an unconstitutional double-bond requirement imposed on Petitioners. As this Court has noted: "It cannot be denied that the double-bond requirement heavily burdens the statutory right of a[ ] defendant to appeal." *Lindsey*, 405 U.S. at 77. Accordingly, this double-bond requirement raises serious concerns regarding a party's access to the federal appellate process, especially when an appellant, as here, has limited financial means. And this Court – not the Eighth Circuit – must decide whether it is permissible to use Rule 7 to erect such barriers to appeal.

B. The Eighth Circuit's Order Erects a Barrier to Future Litigants' Ability to Appeal.

If allowed to stand, the Eighth Circuit's order could effectively close the door to the appellate courthouse for certain future parties with limited or even moderate financial means. As this Court has stated: "A court is 'without right to . . . put a price on an appeal. A defendant's exercise of a right of appeal must be free and unfettered.'" *North Carolina v. Pearce*, 395 U.S. 711, 724 (1969) (quoting *Worcester v. Comm'r*,

370 F.2d 713, 718 (1st Cir. 1966)). However, to require the posting of a bond where an appellee already holds an appellant's cash, in an amount greater than the bond, places just that price on an appeal. In fact, the consequences of this double-bond requirement are precisely those that this Court has condemned: foreclosing parties from the appellate process. *See Lindsey*, 405 U.S. 56-92 (noting that a double-bond requirement may violate a particular party's equal protection rights because it forecloses a party's opportunity to appeal); *Boddie v. Connecticut*, 401 U.S. 371 (1971) (acknowledging that a cost requirement may offend due process because it forecloses a party's opportunity to be heard).

As the United States Court of Appeals for the District of Columbia explained, in addressing bonds under Rule 7, "[c]ourts . . . must be wary of orders, even those well-meaning, that might impermissibly encumber that right [to appeal]." *In re American President Lines, Inc.*, 779 F.2d 714, 718 (D.C. Cir. 1985). Without question, the Eighth Circuit's order impermissibly encumbers the right to appeal for future litigants with limited financial means. And only this Court should decide whether Rule 7 can be used to erect such a barrier.

C. The Eighth Circuit's Order Denies Petitioners the Right to Pursue a Meritorious Appeal that Directly Relates to Fundamental Constitutional and Statutory Protections.

On appeal, Petitioners were not objecting to the class settlement in order to prevent the 11 Named Plaintiffs from receiving their settlement payouts; nor were they objecting to the $985,000 in attorney fees awarded to class counsel. Rather, Petitioners were objecting because the settlement missed its ultimate goal of requiring Gold'n Plump to provide short breaks that permitted Petitioners to pray according to their beliefs; and, in fact, seeking to remedy violations of such statutorily protected rights was the very reason that the class action was brought in the first place. *See, e.g.*, 8th Cir. App. at *A.74*.

The District Court certified the class, for settlement purposes, pursuant to Federal Rule of Civil Procedure 23(a) and (b)(2). If an action proceeds under Rule 23(b)(2), notice is given to the class as a whole, and no party is allowed to opt out. *See* Fed. R. Civ. P. 23(c). If, on the other hand, the action proceeds under Rule 23(b)(3), then each member of the class must receive notice and a corresponding opportunity to opt out and litigate (or not) on his or her own behalf. *Id.*

As this Court has explained, the proper interpretation of Rule 23, along with principles of sound judicial management and constitutional considerations (for example, due process), supports the conclusion that, in actions for non-incidental money

damages, class members are entitled to personal notice and an opportunity to be heard – that is, if a class-action involves damages, Rule 23(b)(3), not 23(b)(2), is the appropriate approach. *See Ortiz v. Fibreboard Corp.*, 527 U.S. 815 (1999).

In their appeal, Petitioners argued that the failure to provide them with the opportunity to opt out of the class settlement violated their due process rights as codified in Federal Rule of Civil Procedure 23. *See generally* 8th Cir. App. at *A.39-40*. In other words, because the class-action involved both equitable and monetary relief, the District Court should have applied Rule 23(b)(3), not Rule 23(b)(2). Instead, however, the District Court not only excluded opt-out provisions, but also directed prospectively that any class member who tries to sue Gold'n Plump for alleged discrimination purportedly resolved by the settlement must pay employer Gold'n Plump's attorneys' fees. Thus, at a minimum, Petitioners, in their appeal, had a meritorious claim. But because of the Eighth Circuit's order to dismiss the appeal due to Petitioners' failure to post a bond, Petitioners have no way to rectify post-settlement abuses of their religious rights.

II. The Eighth Circuit Has Decided An Important Federal Question In A Way That Conflicts With Relevant Decisions Of This Court.

In deciding that Petitioners could not offset in lieu of a bond, despite the fact that such costs were already secured, the Eighth Circuit has ignored

relevant, clear, and well-established Supreme Court precedent.

A. The Eighth Circuit Ignored Basic Elements of Due Process Established by this Court when It Denied Petitioners' Motion to Offset In Lieu Of a Bond.

This Court, in *Boddie v. Connecticut*, 401 U.S. 371 (1971), held that due process of law prohibited a state from denying, solely based on an inability to pay court fees and costs, access to its courts to indigents who, in good faith, sought judicial dissolution of their marriages. In reaching its decision, the Court identified central elements of due process that serve to protect an individual's right of access to the courts. And though *Boddie* involved the state court system, its discussion of due process principles is applicable here:

First, as the *Boddie* Court explained, due process requires, at a minimum, that absent a countervailing state interest of overriding significance, persons forced to settle their claims of right and duty through the judicial process must be given a "meaningful opportunity to be heard." *Id.* at 377.

Second, "a statute or a rule may be held constitutionally invalid as applied when it operates to deprive an individual of a protected right although its general validity as a measure enacted in the legitimate exercise of state power is beyond question." *Id.* at 379. Thus, "the right to a meaningful opportunity

to be heard within the limits of practicality must be protected against denial by particular laws that operate to jeopardize it for particular individuals." *Id.* at 379-80.

Third, "[j]ust as a generally valid notice procedure may fail to satisfy due process because of the circumstances of the defendant, so too a cost requirement, valid on its face, may offend due process because it operates to foreclose a particular party's opportunity to be heard." *Id.* at 380.

Under recognized principles of due process, Petitioners were entitled to a meaningful opportunity to appeal. Because the Eighth Circuit's ruling effectively imposed on Petitioners a double-bond requirement, this ruling irrationally and arbitrarily deprived Petitioners of their right to a meaningful appeal. In other words, the Eighth Circuit's particular ruling violated due process because it operated to foreclose a particular party's – the Petitioners' – opportunity to be heard.

B. The Eighth Circuit's Order Deprived Petitioners of Equal Protection Under the Law.

This Court also has recognized, as a matter of equal protection, that a state could not constitutionally provide that defendants unable to pay court costs in advance should be denied the right to plead not guilty or to defend themselves in Court, because the ability to pay costs in advance bears no rational

relationship to a defendant's guilt or innocence, and could not be used as an excuse to deprive a defendant of a fair trial. *Griffin v. Illinois*, 351 U.S. 12, 17 (1956). *Griffin* held that there was "no meaningful distinction between a rule which would deny the poor the right to defend themselves in a trial court and one which effectively denies the poor an adequate appellate review accorded to all who have money enough to pay the costs in advance." *Id.* at 18.

Though *Griffin* involved criminal law, the equal protection principles discussed in that case have been applied to appellants in civil cases. *See Lindsey*, 405 U.S. 56-92. *Lindsey* invalidated, as a violation of equal protection, an Oregon appellate requirement that an appellant in a state forcible entry and wrongful detainer action post a bond in twice the amount of rental value of the premises. Essentially, the Court said that in order for appellate bond rules to comport with equal protection, such rules must be reasonably tailored to achieve the ends sought to be protected, and they must be uniformly and nondiscriminatorily applied.

As the *Lindsey* Court explained: "The discrimination against the poor . . . [who] cannot post the double bond, is particularly obvious. For them, as a practical matter, appeal is foreclosed, no matter how meritorious their case may be." *Id.* at 79. In other words, an opportunity to appeal cannot be granted to some litigants and capriciously or arbitrarily denied to others without violating the equal protection clause. *See Lindsey*, 405 U.S. 56-92; *Griffin*, 351 U.S.

12-39. The Eighth Circuit's order denying offset in lieu of a bond capriciously and arbitrarily denied Petitioners an opportunity to appeal; the order, therefore, violated Petitioners' equal protection rights.

CONCLUSION

Because the Eighth Circuit Court of Appeals has decided an important question of federal law which has not been, but should be, settled by this Court, and because the Eighth Circuit has decided an important federal question in a way that conflicts with relevant decisions of this Court, the Writ should be granted.

Respectfully submitted,

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APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No: 09-2398

Aware Daud, et al.,

Appellees

Farah Ade Mohamed, et al.,

Appellants

v.

Gold'n Plump Poultry, Inc. and The Work Connection, Inc.,

Appellees

No: 09-2399

Equal Employment Opportunity Commission, et al.,

Appellees

Rashid Mohamed Osman, et al.,

Appellants

Gold'n Plump Poultry, Inc.,

Appellee

Appeal from U.S. District Court for the District of Minnesota – Minneapolis
(0:06-cv-04013-JJG)
(0:08-cv-05136-JJG)

ORDER

Appellants motion to use alternative $25,000 to satisfy $25,000 bond requirement is hereby denied. Appellants are given five additional days from the date of this order to post the $25,000 appeal bond or the appeal will be dismissed.

October 27, 2009

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

APPENDIX B

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No: 09-2398

Aware Daud, et al.,

Appellees

Farah Ade Mohamed, et al.,

Appellants

v.

Gold'n Plump Poultry, Inc. and
The Work Connection, Inc.,

Appellees

No: 09-2399

Equal Employment Opportunity Commission, et al.,

Appellees

Rashid Mohamed Osman, et al.,

Appellants

v.

Gold'n Plump Poultry, Inc.,

Appellee

Appeal from U.S. District Court for the
District of Minnesota – Minneapolis
(0:06-cv-04013-JJG)
(0:08-cv-05136-JJG)

ORDER

Upon consideration of appellees' motion to dismiss, as well as appellants' response to the motion, it hereby ordered that this appeal will be dismissed if the $25,000 appeal bond is not paid within ten days of the date of this order.

October 14, 2009

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

APPENDIX C

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No: 09-2398

Aware Daud; Khadija Jama; Abdiaziz Ali Abdi; Sahra Farah; Anab Ibrahim; Fowsiya Gelle; Kiin Farah; Lul Esse Hersi; Kasha Anna Sobania; Waris Barre; Issak Horor; Equal Employment Opportunity Commission,

Plaintiffs-Appellees

Farah Ade Mohamed; Rashid Mohamed Osman; Asli Hassan Adan; Leyla S. Adow; Deeqa D. Ali; Khadro Muse Ali; Muse A. Ali; Nadifo M. Hashi; Abdikhadar Ahmed Jama; Abdinasar Hassan Khalif; Mohamed S. Mohamed; Nirno Y. Yussuf; Abdiqani Yusuf; Naimo Mohamed Yusuf; Susan Guhad; Abdulkadir Haji; Masbal A. Ismail; Abdifatah Abdullahi Isse; Keyro Hassan; Ayan M. Yussuf; Awale; Diney Abdi; Fahmo Yusuf; Fowsia Jama; Masbal Ahmed; Mohamed Abdi; Mohamed Omar; Mohamed Hirsi; Osman Hanshi Abdi-haye; Daud D. Roble; Mohamed H. Yusuf; Yusaf Adan Abdi; Balos Yusuf; J. Abokar; Nirno Omar; Farhia Yusuf; Khamar Ahmed Malin; Amina Arale; Mariam Mohamed; Sahro Moalin; Ifrah Abdi Jama; Hibaq Abdi; Ayan M. Salah; Saida Mohamud Hassan; Khadra Omar; Safiya Abdule; Amina Sugule; Asho Yusuf; Hindo Dubat; Fartun Diriye; Maryan Guhad; Khadra Ali; Bashaal Mahamed Hussein; Ahmed Noor Sahal; Bashir Dube; Fahmo H. Yusuf; Hussein Yusuf;

Ahmed Hassan Arte; Mohamed O. Abdi;
Mohamed Y. Abdi; Abdikadir Diriye,

Objectors-Appellants

v.

Gold'n Plump Poultry, Inc.;
The Work Connection, Inc.,

Defendants-Appellees

No: 09-2399

Equal Employment Opportunity Commission;
Aware Daud; Khadija Jama; Abdiaziz Ali Abdi;
Sahra Farah; Anab Ibrahim; Fowsiya Gelle;
Kiin Farah; Lul Esse Hersi; Kasha Anna Sobania;
Waris Barre; Issak Horor,

Plaintiffs-Appellees

Rashid Mohamed Osman; Asli Hassan Adan;
Leyla S. Adow; Deeqa D. Ali; Khadro Muse Ali;
Muse A. Ali; Nadifo M. Hashi; Abdikhadar Ahmed
Jama; Abdinasar Hassan Khalif; Mohamed S.
Mohamed; Nirno Y. Yussuf; Abdiqani Yusuf;
Naimo Mohamed Yusuf; Susan Guhad; Abdulkadir
Haji; Masbal A. Ismail; Abdifatah Abdullahi Isse;
Keyro Hassan; Ayan M. Yussuf; Awale; Dincy Abdi;
Fahmo Yusuf; Fowsia Jama; Masbal Ahmed;
Mohamed Abdi; Mohamed Omar; Mohamed Hirsi;
Farah Ade Mohamed; Osman Hanshi Abdi-haye;
Daud D. Roble; Mohamed H. Yusuf; Yusaf Adan Abdi;
Balos Yusuf; J. Abokar; Nirno Omar; Farhia Yusuf;
Khamar Ahmed Malin; Amina Arale; Mariam
Mohamed; Sahro Moalin; Ifrah Abdi Jama;

Hibaq Abdi; Ayan M. Salah; Saida Mohamud Hassan; Khadra Omar; Safiya Abdule; Amina Sugule; Asho Yusuf; Hindo Dubat; Fartun Diriye; Maryan Guhad; Khadra Ali; Bashaal Mahamed Hussein; Ahmed Noor Sahal; Bashir Dube; Fahmo H. Yusuf; Hussein Yusuf; Ahmed Hassan Arte; Mohamed O. Abdi; Mohamed Y. Abdi; Abdikadir Diriye,

Objectors-Appellants

v.

Gold'n Plump Poultry, Inc.,

Defendant-Appellee

Appeal from U.S. District Court for the District of Minnesota – Minneapolis
(0:06-cv-04013-JJG)
(0:08-cv-05136-JJG)

JUDGMENT

Appellants' renewed motion for offset in lieu of bond is denied. The appeals are hereby dismissed.

November 10, 2009

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

APPENDIX D

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Aware Daud, et al., Plaintiffs and proposed class representatives, vs. Gold'n Plump Poultry, Inc. and The Work Connection, Inc., Defendants.	Court File No. 06-4013 DSD/JJG
Equal Employment Opportunity Commission, Plaintiff, vs. Gold'n Plump Poultry, Inc., Defendant.	Court File No. 08-5136 DSD/JJG
Equal Employment Opportunity Commission, Plaintiff, vs. The Work Connection, Inc., Defendant.	Court File No. 08-5137 DSD/JJG

FINDINGS AND ORDER CERTIFYING CLASS FOR SETTLEMENT PURPOSES, PRELIMINARILY APPROVING PROPOSED SETTLEMENT, APPROVING FORM AND DISSEMINATION OF CLASS NOTICE, AND SETTING DATE FOR HEARING ON FINAL APPROVAL

This matter came before the Court on Plaintiffs Aware Daud, Khadija Jama, Abdiaziz Ali Abdi, Sahra Farah, Anab Ibrahim, Fowsiya Gelle, Kiin Farah, Lul Esse Hersi, Kasha Anna Sobania, Warris Barre and Issak Horor's ("Daud Named Plaintiffs") Motion to Certify Class for Settlement Purposes and for Preliminary Approval of the Daud Class Action Settlement and Form and Dissemination of Notice.

Having considered the motions, the memoranda and other materials filed in support thereof, the proposed Class Action Settlement ("Settlement") between the Daud Named Plaintiffs and Defendants Gold'n Plump Poultry, Inc. and The Work Connection, Inc., the proposed EEOC Consent Decrees, and the applicable law; having considered whether to certify a class for settlement purposes and whether the settlement is sufficient to warrant the issuance of notice to members of the Daud Settlement Class; and having found that the proposed Settlement Agreement meets

the applicable criteria for preliminary approval, the Court hereby orders as follows:[1]

1. ***Daud Settlement Class Findings.*** For purposes of the settlement of the Action (and only for such purposes, without an adjudication on the merits), the Court finds that the requirements for certification of Federal Rule of Civil Procedure 23 and any other applicable law have been met as to the Daud Settlement Class defined below, in that:

> A. The Court finds that the Daud Settlement Class is ascertainable from records kept on file by defendants, and the members of the Daud Settlement Class are so numerous that their joinder before the Court would be impracticable. Rule 23(a)(1) is satisfied.
>
> B. The commonality requirement of Fed. R. Civ. P. 23(a) is generally satisfied when members of the proposed Daud Settlement Class share at least one common factual or legal issue. Here the Daud Named Plaintiffs have alleged questions of fact and law purportedly common to the proposed Daud Settlement Class. The Court preliminarily finds that there are one or more questions of fact or law common to the Daud Settlement Class. Rule 23(a)(2) is satisfied.

---

[1] Capitalized terms not otherwise defined in this Order shall have the same meaning as ascribed to them in the Settlement Agreement.

C. The Court finds that the Daud Named Plaintiffs' claims are typical of the claims of the Daud Settlement Class. Rule 23(a)(3) is satisfied.

D. The Court finds that the Daud Named Plaintiffs will fairly and adequately protect the interests of the Daud Settlement Class in that (i) the Daud Named Plaintiffs' interests and the nature of the claims alleged are consistent with those of the members of the Daud Settlement Class, (ii) there appear to be no conflicts between or among the Daud Named Plaintiffs and the Daud Settlement Class, and (iii) the Daud Named Plaintiffs and the members of the Daud Settlement Class are represented by qualified counsel who are experienced in preparing and prosecuting complex class actions. Rule 23(a)(4) is satisfied.

E. Having considered the allegations of the Amended Complaint that defendants have allegedly acted on grounds that apply generally to the class, the Court finds that final equitable relief is appropriate respecting the class as a whole. The proposed resolution of this Action provides current and future employees with a reasonable accommodation for prayer. Rule 23(b)(2) is satisfied.

F. The Court finds that Larson King, LLP and Zimmerman Reed, P.L.L.P. ("Daud Class Counsel") are capable of fairly and adequately representing the interests of the

> Daud Settlement Class. Daud Class Counsel have done extensive work identifying or investigating potential claims in the Action and have litigated the validity of those claims. Daud Class Counsel are experienced at handling class actions, other complex litigation, and claims of the type asserted in this Action. Daud Class Counsel are knowledgeable of the applicable law, and Daud Class Counsel have committed the necessary resources to represent the Daud Settlement Class. Rule 23(g) is satisfied.

2. ***Daud Settlement Class Certification.*** Based on the foregoing findings, the Court certifies the following class under Fed. R. Civ. P. 23(a) and (b)(2) in this Action, for the sole purpose of settlement and without an adjudication on the merits (the "Daud Settlement Class"):

> All former, current, and future Muslim, hourly, nonexempt production line employees of Gold'n Plump or TWC who have worked, now work, or in the future work in live receiving, evisceration, and second processing at Gold'n Plump's poultry processing facilities in Cold Spring, Minnesota or Arcadia, Wisconsin (the "Facilities") at any time between September 1, 2005 and September 1, 2011, and all former, current, and future Muslim applicants for those positions through Gold'n Plump or TWC at any time between September 1, 2005 through September 1, 2011.

The Court finds, solely for the purpose of settlement, the Daud Settlement Class is sufficiently well-defined and cohesive.

The Court appoints the Daud Named Plaintiffs as the class representatives for the Daud Settlement Class, and Larson King, LLP and Zimmerman Reed, PLLP as Daud Class Counsel.

3. ***Preliminary Findings Regarding Proposed Settlement.*** The Court preliminarily finds that:

> A. The proposed settlement resulted from extensive arm's-length negotiations and was concluded only after the Daud Class Counsel had conducted adequate discovery and had consulted independent experts about the issues raised by the Daud Named Plaintiffs' claims;
>
> B. Daud Class Counsel have concluded that the proposed settlement is fair, reasonable, and adequate;
>
> C. The equitable relief detailed in Paragraph 3 of the Settlement Agreement provides Daud Settlement Class members with reasonable accommodation as that term is understood in accordance with Title VII, the Minnesota Human Rights Act, and the Wisconsin Fair Employment Law of their Muslim religious prayer obligations;
>
> D. The proposed settlement is sufficiently fair, reasonable, and adequate to warrant sending notice of the settlement to

the Daud Settlement Class and holding a full fairness hearing on the proposed settlement.

Accordingly, the terms of the Settlement Agreement are hereby preliminarily approved and made a part of this Order, and shall be submitted to the Daud Settlement Class members for their consideration and for a hearing under Rule 23(e) of the Federal Rules of Civil Procedure on whether to grant final approval to the proposed settlement.

4. ***Fairness Hearing.*** A fairness hearing is scheduled for February 17, 2009 before the Honorable Jeanne J. Graham, Courtroom 3B, in the United States District Court for the District of Minnesota, Warren E. Burger Federal Building, 316 North Robert Street, Saint Paul, Minnesota 55101, on the proposed Settlement to determine, among other things:

- Whether the Action should be finally certified as a class action solely for settlement purposes;
- Whether the Settlement should be approved as fair, reasonable, and adequate;
- Whether any objection to the Settlement by Daud Settlement Class members has merit;
- Whether the application for attorneys' fees and expenses filed by Daud Class Counsel should be approved.

5. ***Notice of Settlement and Related Dates and Deadlines.*** The proposed Notices of Settlement to Daud Settlement Class members, attached as Exhibits E and F to the Settlement Agreement, and the proposed method of disseminating the Notice of Settlement, are approved. The Court finds that the Notices of Settlement fairly, adequately and reasonably: (a) describe the terms and effect of the Settlement Agreement and of the settlement; (b) notify the Daud Settlement Class that Daud Class Counsel will seek litigation costs, including but not limited to expert fees, mediator fees, translation fees, and court reporter fees, costs of notice, and attorneys' fees not to exceed $985,000; (c) give notice to the Daud Settlement Class of the time and place of the fairness hearing; and (d) describe how the recipients of the class notice may object to any of the relief requested, The notice shall be disseminated to the Daud Settlement Class members as provided for in the Settlement Agreement.

The Court hereby adopts the following dates and deadlines:

November 17, 2008:	Last day for direct mailing of Notice of Settlement.
November 19, 2008:	Last day for publication notice.

February 6, 2009:	Last day (evidenced by postmark) for Daud Settlement Class members to object to or comment on the proposed settlement,
9:30 a.m., February 17, 2008:	Final settlement approval hearing.

For purposes of convenience and efficient administration of the settlement proceeds only, mailing and publication of notice to the Daud Settlement Class will be done in accordance with the separately filed Consent Decrees resolving the EEOC's related litigation against Gold'n Plump and The Work Connection.

6. ***Daud Class Counsel Filings.*** Daud Class Counsel will submit a memorandum in support of final approval of the Settlement Agreement and motion for attorneys' fees and reimbursement of costs, in accordance with law and the local court rules.

7. ***Objections to Settlement.*** Any member of the Daud Settlement Class who wishes to object to the fairness, reasonableness, or adequacy of the settlement, to any term of the Settlement Agreement or Consent Decree, or to the proposed award of attorneys' fees and expenses, may file an objection. To do so, an objector must file with the Court and serve upon Daud Class Counsel and defendants' counsel a statement of his or her objection(s) that includes (a) the objector's name, address, telephone number, the

dates the objector worked at Gold'n Plump and what position(s) the objector worked in, and (b) the specific grounds for the objections. The addresses for filing objections with the Court and service on counsel are as follows:

Clerk of Court
United States District Court
for the District of Minnesota
Warren E. Burger Federal Building
316 North Robert Street
St. Paul, MN 55101

T. Joseph Snodgrass
Larson King, LLP
2800 Wells Fargo Place
30 East Seventh Street
St. Paul, MN 55101

Timothy R. Thornton
Lauren E. Lonergan
Briggs and Morgan, P.A.
2200 IDS Center
80 South Eighth Street
Minneapolis, MN 55402

John J. McDonald, Jr.
Meagher & Geer, P.L.L.P.
Suite 4400
33 South Sixth Street
Minneapolis, MN 55402

No Daud Settlement Class member shall be heard and no papers, briefs, pleadings, or other documents submitted by any Daud Settlement Class member shall be received and considered by the

Court unless the objector (or his or her counsel, if any) effects service of the objection on counsel listed above and files it with the Court by February 6, 2009. Any member of the Daud Settlement Class or other person who does not timely file and serve a written objection complying with the terms of this paragraph shall be deemed to have waived, and shall be foreclosed from raising, any objection to the settlement, and any untimely objection shall be barred.

8. ***Service of Papers.*** Defendants' counsel and Daud Class Counsel shall promptly furnish each other with copies of any and all objections that come into their possession.

9. ***Termination of Settlement.*** This Order shall become null and void, and shall be without prejudice to the rights of the Parties, all of whom shall be restored to their respective positions existing immediately before this Court entered this Order, if the Settlement is terminated in accordance with the Settlement Agreement. In such event, Paragraph 12 of the Settlement Agreement shall govern the rights of the Parties.

10. ***Use of Order.*** This Order shall be of no force or effect if the Settlement does not become final and shall not be construed or used as an admission, concession or declaration by or against the defendants of any fault, wrongdoing, breach or liability or concession as to any issue, including the appropriateness of class certification. Nor shall the Order

be construed as an admission, concession or declaration by or against the Daud Named Plaintiffs or the Daud Settlement Class that their claims lack merit or that the relief requested in the Amended Complaint is inappropriate, improper or unavailable, or as a waiver by any Party of any defense or claims he, she, or it may have.

11. ***Rescheduling of Hearing.*** The Court may reschedule the fairness hearing without further written notice.

12. ***Stay.*** This Action is stayed pending the Court's ruling on the Settlement at the fairness hearing. Daud Settlement Class members are enjoined from filing or prosecuting any action based on or in any way related to the Settled Claims until the Court's ruling on the settlement at the fairness hearing.

SO ORDERED this 7th day of November, 2008.

/s/ *Jeanne J. Graham*
The Honorable Jeanne J. Graham
United States Magistrate Judge

APPENDIX E

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Aware Daud, Khadija Jama, Abdiaziz Ali Abdi, Sahra Farah, Anam Ibrahim, Fowsiyz Gelle, Kiin Farah, Lul Esse Hersi, Kasha Anna Sobiana, Waris Barre, Issak Horor, and the Equal Employment Opportunity Commission,

Plaintiffs,

v.

Gold'n Plump Poultry, Inc. and The Work Connection, Inc.,

Defendants.

Civ. No. 06-4013 (JJG)

ORDER

JEANNE J. GRAHAM, United States Magistrate Judge

This case is before the undersigned United States Magistrate Judge on Plaintiffs' Motion for Final Approval of Class Action Settlement and Motion for an Award of Attorneys' Fees, Costs, and Expenses to Class Counsel (Doc. No. 186), and on the request of the Equal Employment Opportunity Commission for final approval of two consent decrees. All parties have consented to the exercise of jurisdiction by the

undersigned United States Magistrate Judge pursuant to 28 U.S.C. § 636(c)(1). For the reasons set forth below, the Court approves the class action settlement, the consent decrees, and the request for fees and costs.

I. FINDINGS OF FACT

A. Background and Procedural History

1. This case was commenced as a putative class action by Plaintiffs and proposed class representatives Aware Daud, Khadija Jama, Abdiaziz Ali Abdi, Sahra Farah, Anab Ibrahim, Fowsiya Gelle, Kiin Farah, Lul Esse Hersi, and Kasha Anna Sobania on October 6, 2006. Waris Barre and Issak Horor were later added to the caption as Plaintiffs and proposed class representatives. Together, these eleven individuals are known as the "Daud Named Plaintiffs."

2. Defendant Gold'n Plump Poultry, Inc. ("Gold'n Plump") is a poultry processor with facilities in Cold Spring, Minnesota, and Arcadia, Wisconsin. Gold'n Plump employed the Daud Named Plaintiffs as production workers at its processing facilities.

3. The Work Connection, Inc. ("TWC") is a privately held, temporary employment agency. Gold'n Plump hired TWC to screen, hire, and employ workers, including some of the Daud Named Plaintiffs, to work at Gold'n Plump.

4. Ten of the eleven Daud Named Plaintiffs are Somali Muslims.

5. The Islamic religion requires its followers to pray at least five times a day. The time for the five obligatory prayers changes depending on the location of the sun and the individual's geographic location. For example, the Fajr prayer, primarily at issue in this litigation, must generally occur between dawn and sunrise. So in 2009, based on the geographic location of Gold'n Plump's facility in Cold Spring, Minnesota, Fajr can begin as early at 3:30 a.m. and as late as 6:29 a.m., depending on the time of year.

6. Gold'n Plump's processing facilities are subject to strict regulations governing food and worker safety. Some of these regulations mandate specific break times. For example, the United States Department of Agriculture requires that lunch occur during the fifth operating hour of each shift. The State of Minnesota requires a rest break during the first four hours of work. Other regulations require Gold'n Plump to keep its poultry products at or below a certain temperature and to complete the processing within a certain amount of time.

7. Gold'n Plump initially developed a floating break policy to accommodate the prayer beliefs of its Muslim employees while meeting the logistical challenges of running a poultry processing facility. Not every Muslim employee's position qualified him or her to take a floating break, however, and the floating break policy proved to be inefficient and costly to Gold'n Plump.

8. Seeking to achieve a reasonable accommodation with respect to the prayer break policy, and to rectify other alleged unlawful employment practices concerning racial and religious discrimination, the Daud Named Plaintiffs brought suit against Gold'n Plump.

9. The Daud Named Plaintiffs also sued TWC for religious discrimination, alleging that TWC had not provided job applicants and employees with a reasonable accommodation for handling pork.

10. For almost two years, the parties engaged in extensive pretrial discovery. They exchanged hundreds of thousands of pages of written discovery, retained experts, deposed dozens of witnesses, met with leaders of the Somali Muslim community, and inspected Gold'n Plump's facilities. The parties exchanged sufficient information to reliably assess the merits of the claims and defenses in this case.

11. Although the Equal Employment Opportunity Commission ("EEOC") did not independently serve any discovery in this litigation, it obtained and reviewed the information produced and conducted its own administrative investigations of the charges filed against Gold'n Plump and TWC. The EEOC had sufficient information to accurately evaluate its case against TWC and Gold'n Plump.

12. The Daud Named Plaintiffs believed they obtained strong evidence during discovery that Gold'n Plump had engaged in numerous acts of religious discrimination and had failed to reasonably accommodate

its Muslim employees' requests for prayer breaks. Gold'n Plump, on the other hand, vigorously denied discriminating against its employees or denying reasonable religious accommodations, and it developed evidence that the accommodations sought by the Daud Named Plaintiffs would be costly and inefficient.

13. The Daud Named Plaintiffs' case against TWC was founded on the legal argument that a temporary employment agency could not require a job applicant to waive his or her right to a reasonable religious accommodation before placement with an employer, TWC was resolute in its defense that it had offered Muslim job applicants placement with other employers where handling pork was not an issue.

14. It is beyond dispute that this case was contentious and controversial from the start. The parties disagreed emphatically on almost every issue, and they only became further entrenched in their respective positions as discovery progressed. It was against this backdrop that the parties began discussing a settlement.

B. The Proposed Settlement

15. Prior to the court-ordered settlement conference on August 27, 2008, the parties engaged in several private mediation sessions with the Honorable Jonathan G. Lebedoff, United States Magistrate Judge for the District of Minnesota, now retired.

Although the parties made substantial progress, no settlement was reached.

16. On August 27, 2008, certain Daud Named Plaintiffs, counsel for the Daud Named Plaintiff, Somali community leaders, the EEOC, Gold'n Plump, and TWC participated in a settlement conference with both Magistrate Judge Lebedoff and this Court. Two Somali interpreters were also present.

17. Both this Court and Magistrate Judge Lebedoff were apprised of the financial conditions of TWC and Gold'n Plump during the settlement negotiations.

18. Counsel for the Daud Named Plaintiffs and the EEOC also had some knowledge of the financial conditions of TWC and Gold'n Plump. Counsel for the Daud Named Plaintiffs knew that a large adverse judgment had recently been awarded against Gold'n Plump in another case, and that Gold'n Plump's financial condition had been weakened by increased feed and energy costs. Counsel thought that TWC would not have sufficient assets to pay a significant verdict due to its status as a privately-held company operating in a service industry.

19. A major factor motivating TWC and Gold'n Plump to settle was the adverse effect of litigation costs on their insurance policy limits. Both Gold'n Plump and TWC had liability insurance for the types of claims asserted in this case, but the policies contained provisions that reduced the amount of money available to pay a judgment as litigation expenses

increased. Thus, as litigation proceeded, the assets of TWC and Gold'n Plump were increasingly exposed. Furthermore, TWC's and Gold'n Plump's attorneys' fees were being paid from the same pool of insurance money that was potentially available to pay a judgment, and further litigation would have continually eroded this fund.

20. Another important motivation for Gold'n Plump to settle was to bring peace and normalcy to the workplace.

21. Plaintiffs' primary motivation to settle was to implement an acceptable prayer break policy and enjoin future religious discrimination.

22. Despite holding widely divergent positions based on seemingly incompatible cultural and economic considerations, the parties reached a proposed, global settlement at the settlement conference on August 27, 2008, and stated the material terms on the record. The terms of the proposed settlement were interpreted for and approved by the Daud Named Plaintiffs.

23. As contemplated by the settlement negotiations and as a condition precedent to final approval of the settlement, the EEOC filed two separate cases: *EEOC Gold'n Plump Poultry, Inc.*, Civ. No. 08-5136, and *EEOC v. The Work Connection, Inc.*, Civ. No. 08-5137. Both cases were filed on September 8, 2008.

24. This Court held a hearing on October 15, 2008, on disputed issues concerning the proposed

settlement. The parties were instructed to continue their discussions and to provide updates to the Court.

25. The Daud Named Plaintiffs, Gold'n Plump, and TWC entered into a written, proposed settlement agreement on November 3, 2008.

26. Key provisions of the proposed settlement included the following. Gold'n Plump agreed to accommodate Muslim Dhuhr and Fajr prayers by providing a ten-minute, paid prayer break for employees working in the second processing unit, for both the day and night shifts. The prayer breaks will be scheduled during the windows of time for the Fajr and Dhuhr prayers, as set by islamicfinder.org. To minimize disruption to the production line, Gold'n Plump is authorized to determine the exact break time during the window. Gold'n Plump will pay $215,000 and TWC will pay $150,000 in monetary relief. The EEOC has sole responsibility for allocating the money to the settlement class members. TWC and Gold'n Plump will pay no more than $985,000 in attorneys' fees to counsel for the settlement class. Class members will release all claims that could have been brought in this case or are related in any way to the claims pled in the Amended Complaint, including claims concerning Muslim holidays.

27. Another term of the proposed settlement was the parties' consent to the exercise of jurisdiction by this Court pursuant to 28 U.S.C. § 636(c)(1). The parties subsequently executed a written consent to jurisdiction.

28. There was no evidence of collusion at any point during the settlement negotiations, and all negotiations were conducted at arms-length.

C. This Court's Order of November 7, 2008

29. Consistent with the proposed settlement agreement, this Court entered an Order on November 7, 2008, certifying a class for settlement purposes, preliminarily approving the settlement, approving the forms and methods of notice of the settlement to members of the class, and setting a hearing date for final approval of the settlement.

30. With respect to certification, the Court found that the settlement class was readily ascertainable and that members of the class were so numerous that joinder would be impracticable. As such, Federal Rule of Civil Procedure 23(a)(1) was satisfied. Rule 23(a)(2) was satisfied because one or more questions of fact or law were common to the settlement class. The Daud Named Plaintiffs' claims were typical of the claims of the settlement class, thereby fulfilling Rule 23(a)(3). Rule 23(a)(4) was satisfied because the Daud Named Plaintiffs would fairly and adequately protect the interests of the settlement class, in that the interests and claims of the Daud Named Plaintiffs were consistent with those of the settlement class; there were no conflicts between the Daud Named Plaintiffs and the settlement class; and the Daud Named Plaintiffs and members of the settlement class were represented by

qualified counsel experienced in preparing and prosecuting complex class actions. Finally, Rule 23(b)(2) was fulfilled because final equitable relief was appropriate regarding the class as a whole, and the proposed settlement provided current and future employees with a reasonable accommodation for prayer.

31. The Court appointed Larson King, LLP and Zimmerman Reed, PLLP as class counsel ("Daud Class Counsel") because they were capable of fairly and adequately representing the interests of the settlement class, had done extensive work identifying and investigating the claims in the case, were experienced at handling class actions and similar complex cases, were knowledgeable of the applicable law, and had committed the necessary resources to represent the settlement class. Accordingly, Rule 23(g) was satisfied.

32. The Court appointed the Daud Named Plaintiffs as the class representatives for the settlement class.

33. Based on the above findings, the Court certified a class under Rule 23(a) and (b)(2), solely for the purpose of settlement and without an adjudication on the merits ("Daud Settlement Class"). The class was defined as:

> All former, current, and future Muslim, hourly, nonexempt production line employees of Gold'n Plump or TWC who have worked, now work, or in the future work in live receiving, evisceration, and second processing

> at Gold'n Plump's poultry processing facilities in Cold Spring, Minnesota or Arcadia, Wisconsin (the "Facilities") at any time between September 1, 2005 and September 1, 2011, and all former, current, and future Muslim applicants for those positions through Gold'n Plump or TWC at any time between September 1, 2005 through September 1, 2011.

(Order at 4-5, Nov. 7, 2008.)

34. The Court also preliminarily approved the terms of the settlement agreement and ordered the settlement to be submitted to the Daud Settlement Class members for their consideration.

35. The Order mandated the procedure by which members of the Daud Settlement Class could file objections to the fairness, reasonableness, and adequacy of the proposed settlement; to any term of the settlement agreement; or to the proposed award of attorneys' fees and expenses. The objector was required to file the objection with the Court and include his or her name, address, telephone number, dates of employment, position held, and the specific ground for the objection. The deadline for filing objections with the Court was February 6, 2009. Untimely objections were explicitly barred.

36. The Court stayed the case pending final approval of the proposed settlement.

D. Notice of the Proposed Settlement and the Claims Process

37. The EEOC mailed Somali-language notices of the settlement and claims process to 953 Daud Settlement Class members on November 17, 2008, followed by English-language versions on November 24, 2008. Recipients were instructed that the enclosed claim forms had to be returned and postmarked by December 19, 2008. The EEOC also published notices of the settlement and claims process on November 21 and 28, and December 5, 2008, in the St. Cloud Times, as well as in the December edition of the Warsan Times, which is a Somali-language newspaper published in Minneapolis, Minnesota. All mailed and published notices were translated into Somali.

38. The EEOC received 147 completed claim forms. Fourteen were rejected as untimely because they were postmarked after December 19, 2008. Ten were rejected based on information provided in the forms, such as the claimant was not Muslim, had suffered no adverse action, or had not been employed by Gold'n Plump.

39. The EEOC calculated the proposed monetary distributions and sent notices to the Daud Settlement Class members on January 13, 2009. The notices informed the claimants they had until February 6, 2009, to file objections to the proposed allocations. This date was later extended to March 5, 2009,

but only for objections to the EEOC's proposed distribution of money.

E. The Consent Decrees

40. On December 1, 2008, the Court signed consent decrees, which were also signed by counsel for all parties, in *EEOC v. Gold'n Plump Poultry, Inc.*, Civ. No. 08-5136 ("Gold'n Plump Consent Decree"), and *EEOC v. The Work Connection, Inc.*, Civ. No. 08-5137 ("TWC Consent Decree").

41. The Gold'n Plump and TWC Consent Decrees mandated several forms of equitable relief, the most significant of which will be summarized here. TWC and Gold'n Plump are prohibited from discriminating on the basis of religion in violation of Title VII in hiring, assigning, promoting, testing, disciplining, discharging, or terminating employees or job applicants. TWC and Gold'n Plump must not retaliate against employees or applicants who oppose unlawful acts under Title VII or who participate in proceedings under Title VII. TWC and Gold'n Plump will provide reasonable accommodation for its employees' and applicants' sincerely held religious beliefs to the extent required by Title VII.

42. Particular to Gold'n Plump is the following requirement to reasonably accommodate the religious practices of Muslim employees with respect to daily prayers.

> In addition to receiving other breaks and lunch breaks as otherwise required by law, such employees in second processing shall be afforded a ten minute break in the second one-half of the shift[,] which . . . shall be scheduled so as to accommodate the daily Muslim schedule for prayer. Employees in first processing shall be permitted to transfer to secondary processing in order to accommodate their practices with respect to daily prayers.

(Gold'n Plump Consent Decree at 6, Dec. 1, 2008.)

43. Specific to TWC is a prohibition on adopting or enforcing any policy adopted by a client under which job applicants or employees must declare in advance that they do not have a right to a reasonable accommodation. TWC is also enjoined from adopting or enforcing a client's policy that (1) prohibits an individual who has been disciplined from obtaining a reasonable accommodation under Title VII, or (2) declares an individual on probationary status ineligible for a reasonable accommodation under Title VII.

44. With respect to monetary relief, Gold'n Plump will pay $215,000 to Daud Settlement Class members. The EEOC will allocate this money in accordance with four categories defined in the Gold'n Plump Consent Decree. The individuals who filed charges of discrimination with the EEOC will each receive $8,000. The six individuals who refused to handle pork will share an additional $7,500, to be divided equally. The remaining $119,500 will be

distributed based on factors such as whether a claimant timely filed a claim form, received a written warning or final corrective action, was terminated for praying during an emergency bathroom break or unscheduled absence, or was denied an accommodation for a sincerely held religious belief.

45. In accordance with the TWC Consent Decree, TWC will pay $150,000 to Daud Settlement Class members, which the EEOC will allocate to three categories of applicants and employees. Individuals who filed EEOC charges will receive $5,802 each. Twenty-three other individuals named in Exhibit B to the TWC Consent Decree will each receive $4,878. Four individuals named in Exhibit C to the TWC Consent Decree will each receive $5,100.

46. The Gold'n Plump Consent Decree established a detailed claims procedure, which the EEOC followed. The EEOC mailed notice of the proposed settlement to each potential Daud Settlement Class member, who was instructed to return the attached claim form within thirty days in order to receive a monetary distribution. After receiving the claim forms, the EEOC determined for each Daud Settlement Class member his or her proposed share of the settlement amount. The EEOC then notified each individual Daud Settlement Class member of his or her proposed allocation of monetary relief and of the right to file objections to the Gold'n Plump Consent Decree. The deadline for objections to be postmarked was February 6, 2009. This date was later extended

to March 5, 2009, but only for objections to the EEOC's proposed monetary distributions.

47. There was no claims procedure established by the TWC Consent Decree because all twenty-eight individuals who were eligible to recover had been identified during the settlement negotiations. The EEOC simply determined the proposed distribution amounts and gave notice to the proper individuals.

48. The Gold'n Plump and TWC Consent Decrees constituted the full and final resolution of the EEOC's claims against Gold'n Plump and TWC.

F. Objections to the Consent Decrees

49. There were no objections to the TWC Consent Decree.

50. According to the Court's docket, two Daud Settlement Class members filed objections to the Gold'n Plump Consent Decree. Nasro Mohamed Hashi objected to the EEOC's determination that he did not qualify for a monetary distribution because he failed to timely return his claim form. His claim form was postmarked on December 24, 2008, five days after the December 19, 2008 deadline. Nasro Said Omar objected to his proposed distribution of $750.

G. Objections to the Proposed Settlement

51. According to the Court's docket, twenty-six Daud Settlement Class members timely filed objections

to the proposed settlement. Those individuals are Hibaq Abdi, Abdi-haye Osman Hanshi, Mohamud Yusuf Ahmed, Daud D. Roble (a/k/a Roble Daud Dakane), Balos Yusuf, Nimo Omar, Farhia Yusuf, Amina Arale, Mariam Mohamed, Sahro Moalin, Ayan M. Salah, Saida Mohamud Hassan, Khadra Omar, Amina Sugule, Asho Yusuf, Hindo Dubat (a/k/a Linda Dubat), Fartun Diriye, Maryan Guhad (a/k/a Maryan H. Guhad), Bashaal Mahamed Hussein, Farah Ade Mohamed, Ahmed Noor Sahal, Hussein Yusuf (a/k/a Mohamed H. Yusuf), Ahmed Hassan Arte, and Asli Adan. The vast majority of these objections were presented on a pre-printed form containing signature lines for employees or former employees wishing to object. These objectors asserted that (1) the negotiated prayer break did not coincide with the optimal Muslim prayer schedule; (2) the EEOC's proposed monetary distributions were not equivalent to their lost wages; (3) they had not received compensation for religious discrimination; and (4) Gold'n Plump refused to give them an employment reference.[1]

52. On March 2, 2009, Jay W. Ramos, Esq., filed a document captioned "Objections of 28," purportedly on behalf of twenty-eight Daud Settlement Class members, although only twenty-seven individuals are named on an attached chart. Mr. Ramos objected

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[1] Asli Adan also raised other "objections," which are not relevant to the terms of the proposed settlement or consent decrees, such as the denial of unemployment benefits. Those objections are summarily rejected.

primarily to the new prayer break policy, but he also questioned the total monetary amount of the settlement and the lack of an opt-out provision. As a factual matter, the Court finds that the objections presented by Mr. Ramos are untimely because they do not relate to the EEOC's proposed monetary distributions. In the interest of providing a complete record, however, the Court will address Mr. Ramos' arguments in the Conclusions of Law section below.

H. Consolidation of the Three Actions

53. On January 21, 2009, *EEOC v. Gold'n Plump Poultry, Inc.*, Civ. No. 08-5136, and *EEOC v. The Work Connection, Inc.*, Civ. No. 08-5137, were consolidated into *Daud v. Gold'n Plump Poultry, Inc.*, Civ. No. 06-4013, for the purposes of settlement. The EEOC actions were closed, and only the *Daud* case remains open.

I. The Fairness Hearing on March 16, 2009

54. The Court held a fairness hearing on March 16, 2009. No objector spoke at the hearing.

55. Mr. Ramos spoke on behalf of approximately twenty-eight objectors. He repeated some of his earlier written points and made some new arguments. Briefly stated, Mr. Ramos opposed certification of the class, challenged the fairness of the settlement, asserted that class members who did not comply with the claims process should be able to file

individual suits against TWC and Gold'n Plump, argued that the settlement agreement did not accurately reflect the material terms of the settlement, characterized the interests of the Daud Named Plaintiffs as incongruent with those of other class members because they no longer worked for Gold'n Plump, faulted the settlement agreement for not containing an interpreter affidavit, accused counsel of collusion during the settlement negotiations, and asserted that no Somali community leaders were involved with the settlement negotiations.

56. As with Mr. Ramos' written filings, the Court finds that the new objections asserted at the hearing were untimely but, in the interest of developing a full record, will discuss them below.

J. Attorneys' Fees, Costs, and Expenses

57. Daud Class Counsel has spent approximately 4,770 hours on this litigation as of March 4, 2009, resulting in a lodestar amount of $1,660,730.75. Daud Class Counsel has also incurred $162,333.48 in unreimbursed costs and attorneys' fees.

58. As part of the settlement, TWC and Gold'n Plump agreed to pay an amount not to exceed $985,000 to Daud Class Counsel.

59. The costs and fees will be paid separately from the monetary awards, and no Daud Settlement Class member's share will be reduced due to the payment of attorneys' fees and costs.

60. No Defendant or Daud Settlement Class member objected to the amount of fees and expenses requested.

II. CONCLUSIONS OF LAW

61. The form, content, and method of dissemination of the settlement notice given to the Daud Settlement Class complied with the requirements of Federal Rule of Civil Procedure 23(e)(1) and due process, was reasonably calculated to give all interested parties notice of the settlement, and adequately advised them of their rights to object. *See* Fed. R. Civ. P. 23(e)(1); *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

62. For purposes of the settlement of this case, and without an adjudication on the merits, the Court concludes that the requirements of Federal Rule of Civil Procedure 23 remain satisfied as to the Daud Settlement Class, as determined in this Court's Order of November 7, 2008, and summarized above. The Court therefore grants final certification of this case as a class action for settlement purposes. *See* Fed. R. Civ. P. 23(a)(1)-(4), (b)(2).

63. The Daud Named Plaintiffs have fairly and adequately represented the interests of the Daud Settlement Class. Inherent in this conclusion is the determination that the interests of the Daud Named Plaintiffs are not incompatible with the interests of the Daud Settlement Class simply because they no longer work at Gold'n Plump. Notably, none of

Mr. Ramos' clients are currently employed by Gold'n Plump, and no current employee filed an objection to the new prayer break policy.

64. Daud Class Counsel has acted in the best interests of the Daud Settlement Class as a whole. *See In re BankAmerica Corp. Sec. Litig.*, 210 F.R.D. 694, 706 (E.D. Mo. 2002). Daud Class Counsel achieved significant equitable and injunctive relief for Muslim employees working at Gold'n Plump or applying for employment through TWC, as well as monetary relief.

65. Judicial approval is required for settlement of a class action. Fed. R. Civ. P. 23(e). A court may approve a class settlement only if "it is fair, reasonable, and adequate." *Id.* 23(e)(2).

66. The EEOC sued TWC and Gold'n Plump pursuant to its own enforcement power, not Rule 23, and thus there is no requirement that the consent decrees be judicially approved as adequate, fair, and reasonable. *See Binker v. Pennsylvania,* 977 F.2d 738, 747 (3d Cir. 1992). Nevertheless, the EEOC has agreed to be bound by this Court's determination regarding fairness, adequacy, and reasonableness, and the EEOC shall be bound by this Order.

67. Four factors are relevant to whether a settlement is adequate, fair, and reasonable: "(1) the merits of the plaintiff's case, weighed against the terms of the settlement; (2) the defendant's financial condition; (3) the complexity and expense of further litigation; and (4) the amount of opposition to the

settlement." *In re Wireless Tel. Fed. Cost Recovery Fees Litig.*, 396 F.3d 922, 932 (8th Cir. 2005) (citing *Grunin v. Int'l House of Pancakes,* 513 F.2d 114, 124 (8th Cir. 1975)).

68. The merits of this case were vigorously disputed, and the parties purposely chose not to comment on the merits in the settlement or the consent decrees. Accordingly, even though the Court must balance the merits of this case against the settlement terms, the Court will not reach any final conclusions on the merits. *See Grunin*, 513 F.2d at 123 (citations omitted); *EEOC v. McDonnell Douglas Corp.*, 894 F. Supp. 1329, 1334 (E.D. Mo. 1995).

69. Suffice it to say, the claims of the Daud Settlement Class have some merit, as do the defenses of Gold'n Plump and TWC. There is controversy, and strong opinions, on both sides of this dispute, and the terms of the settlement provide a good balance between the competing positions. With regard to the monetary aspect of the settlement, Gold'n Plump and TWC will pay a total of $365,000 to the Daud Settlement Class members. This amount is neither too low nor too high. It "strikes a reasonable balance between, on the one hand, the hypothetically significant but risky benefits of litigation, and on the other, the certain and immediate benefits of the class-wide relief." *Grove v. Principal Mut. Life Ins. Co.*, 200 F.R.D. 434, 446 (SD. Iowa 2001) (citation omitted).

70. More importantly, Gold'n Plump will provide additional, paid prayer breaks for the Daud

Settlement Class members. The prayer accommodation was the very heart of this case, and its value cannot be quantified in dollars. Attaining the additional prayer breaks was a significant outcome for the Daud Settlement Class.

71. Any discussion of the merits would not be complete without mention of the Eighth Circuit's decision in *Sturgill v. United Parcel Service*, 512 F.3d 1024 (8th Cir. 2008), which was issued during the settlement negotiations. The court in *Sturgill* rejected a jury instruction that described an accommodation as reasonable "if it *eliminates* the conflict between Plaintiff's religious beliefs and Defendant's work requirements." *Id.* at 1030 (emphasis in original). The court explained, "reasonable depends on the totality of the circumstances and therefore might, or might not, require elimination of a particular, fact-specific conflict." *Id.* In other words, a reasonable accommodation does not have to eliminate all conflicts between religion and work. *Id.* at 1032. Although the Court reaches no ultimate conclusions on the effect of *Sturgill* to this case, *Sturgill* certainly strengthened Gold'n Plump's position during the negotiations.

72. Turning to financial considerations, the eroding insurance coverage limits and uncertain fiscal conditions of Defendants weigh in favor of concluding that the settlement is reasonable, fair, and adequate. Continued litigation would have exposed the Daud Settlement Class to increasing risk as the availability of insurance funds dwindled. Daud Class Counsel was concerned that TWC and Gold'n Plump

might not have sufficient assets to pay a substantial monetary judgment. The Court concludes that the settlement is proportionate to the financial situations of TWC and Gold'n Plump.

73. Further litigation would be complex and expensive, which also favors approval of the settlement. This case is almost three years old, and the parties estimate it would take several more years to end absent a settlement. In addition, the three cases-consolidated only for the purpose of settlement would likely proceed separately, multiplying the complexity and expense of additional litigation. Finally, the benefits obtained by the settlement and consent decrees could be significantly diluted, or even lost, before the conclusion of a trial and an appeal. *See Officers for Justice v. Civ. Serv. Comm'n,* 688 F.2d 615, 629 (9th Cir. 1982). The proposed settlement provides the Daud Settlement Class a prompt, economical, and advantageous religious accommodation, as well as monetary compensation, while avoiding the expenses and uncertainty of a lengthy and complex trial.

74. Other than the two organized campaigns of objections, there is relatively little opposition to the settlement. Of 953 notices mailed and 129 claim forms returned, only 26 objections were properly and timely filed. Even if there had been a significant percentage of objections, however, a court may approve a settlement that is nevertheless fair, reasonable, and adequate. *See Van Horn v. Trickey,* 840 F.2d 604, 606 (8th Cir. 1988) (approving a settlement despite

objections from 180 of the approximately 400 class members).

75. The largest category of objectors expressed concern that the new prayer break will not occur at the ideal time for prayer, which they described as between thirty and forty-five minutes after dawn. Because the timing of the Fajr prayer is based on the rising of the sun, this window of time changes practically every day. Correspondingly, the morning prayer break time would have to be changed approximately biweekly in order to meet the demands of the objectors. Moving the window throughout the year, however, would present disruptive and expensive production challenges to Gold'n Plump. As a compromise, therefore, the parties agreed that the prayer breaks will be scheduled during an accepted window for Muslim prayer, as set by islamicfinder.org. This compromise reasonably accommodates the prayer practices of Muslim employees while minimizing the economic and efficiency costs to Gold'n Plump. In contrast, the objectors to the timing of the new prayer breaks seek to eliminate every conflict between work demands and religious beliefs, which is not required by the law. *See Sturgill,* 512 F.3d at 1032. The Court concludes that these objections do not affect the fairness, reasonableness, or adequacy of the settlement.

76. A few objections concern fairness to particular individuals rather than to the award as a whole. These objectors include claimants who did not comply with the requirements of the claims process,

claimants who failed to meet required deadlines, and claimants who believe their individual relief is insufficient or unfair. Having reviewed the objections, the Court concludes that none of these objections affect the fairness, adequacy, or reasonableness of the settlement. No individual objector has explained why he or she could not have complied with the claims process or was prevented from meeting deadlines. Nor has any individual objector shown that his or her individual loss warrants disapproval of the entire settlement. *See McDonnell Douglas Corp.*, 894 F. Supp. at 1335; *see also Officers for Justice*, 688 F.2d at 628 ("Undoubtedly, the amount of the individual shares will be less than what some class members feel they deserve but, conversely, more than the defendants feel those individuals are entitled to. This is precisely the stuff from which negotiated settlements are made.").

77. Another category of objections consists of challenges to the aggregate amount of the settlement. As stated above, however, the monetary amount fairly reflects the financial conditions of Defendants and is proportionate to the merits of the claims in this case. Additionally, "where monetary relief is but one form of the relief requested," the Court must examine "the complete package taken as a whole, rather than the individual component parts . . . for overall fairness." *See Officers for Justice*, 688 F.2d at 628. The focus of this case has always been to redress the alleged discrimination against Somali Muslim employees, and the value of the equitable and injunctive relief

obtained to this end is immeasurable. Considering the entire package of relief obtained in the settlement, the objections to the aggregate monetary amount are not well-founded.

78. Two Daud Settlement Class members have expressed concern that the settlement will preclude their respective pending charges of pregnancy discrimination and disability discrimination: The Court concludes, however, that the terms of the settlement agreement and consent decrees do not preclude claims unrelated to those asserted in this action.

79. Some objectors have asserted that Gold'n Plump is refusing to give them employment references. These objections do not relate to the claims in this case or to the terms of the settlement, and they are rejected. In addition, Gold'n Plump explained that it does not provide employment references for production employees, and no objector has shown otherwise.

80. Turning now to Mr. Ramos' arguments, even though they are untimely, the Court will engage in some discussion of substance so as to eliminate any doubt that the settlement in this case is fair, reasonable, and adequate.

81. The Court begins with Mr. Ramos' assertion of collusion, for which Mr. Ramos has provided absolutely no support, only mere speculation. But the simple fact that adversaries were able to negotiate a settlement acceptable to all parties does not inexorably amount to collusion. Rather, the lengthy and

contentious negotiations were hard-fought and conducted at arms-length at all times. The Court is not willing to interfere with such an extensively and carefully negotiated settlement. *See McDonnell Douglas Corp.*, 894 F. Supp. at 1333-34.

82. Mr. Ramos has suggested that the settlement agreement does not accurately reflect the material terms negotiated by the parties. It is true that although a global settlement was reached at the August 27, 2008 settlement conference, and the terms stated orally on the record, the parties continued to negotiate several disputed issues before entering into the final, written settlement agreement on November 3, 2008. However, Mr. Ramos has not identified any material discrepancy, nor has he identified any provision to which all parties failed to agree. The Court concludes that the written settlement agreement accurately reflects the material terms to which the parties agreed on August 27, 2008.

83. As for Mr. Ramos' challenge to the settlement because there is no interpreter's affidavit attached to the settlement agreement, it is undisputed that an interpreter attended the settlement conference and interpreted the terms of the settlement for the Somali-speaking attendees. Furthermore, the Court has found that the Daud Named Plaintiffs understood the terms of the settlement and agreed to those terms. This objection is flatly without merit.

84. Mr. Ramos' assertion that no Somali community or religious leaders participated in the settlement of this case is also inaccurate. Even before the court-ordered settlement conference, an EEOC attorney and Daud Class Counsel met with Somali elders from the St. Cloud community on April 28, 2008 and explained the proposed prayer break accommodation, the details of which became the basis for the settlement agreement and the Gold'n Plump Consent Decree. Leaders from the St. Cloud Somali community also attended the settlement negotiations. These leaders later told the EEOC that the settlement was a good accommodation for Muslims, and while not the perfect result, was a positive step.

85. Mr. Ramos' final objection of note is that the settlement agreement should include an opt-out provision. This case was certified as a class action under Rule 23(b)(2), however, which does not require such a provision to protect the interests of the class. The inclusion of incidental monetary relief in the settlement does not change the nature of this Rule 23(b)(2) class action, which sought and will receive predominantly equitable relief. *Cf. In re Tex. Prison Litig.*, 191 F.R.D. 164, 179 (W.D. Mo. 1999) (citations omitted).

86. Two final considerations pertaining to the fairness, adequacy, and reasonableness of the settlement bear mention. First, Daud Class Counsel and the EEOC agree that the settlement is fair, adequate, and reasonable. This opinion is entitled to substantial weight. *See Isby v. Bayh*, 75 F.3d 1191, 1200 (7th Cir.

1996); *McDonnell Douglas Corp.*, 894 F. Supp. at 1335. Second, the Court invited the Daud Named Plaintiffs and Somali community leaders to participate in the settlement conference. Their respectful and insightful participation was key to reaching this hard-won settlement.

87. Based on the above, the Court concludes that the settlement of this case is fair, reasonable, and adequate. The settlement results in a *reasonable* accommodation for the Daud Settlement Class's Muslim prayer practices. Moreover, it provides injunctive and equitable relief. Even though the settlement does not provide all the relief desired by certain individual class members, "reasonable" does not mean ideal, perfect, or in satisfaction of each individual's wishes. The Court grants final approval to the settlement.

88. The Court also concludes, in light of the above, that the TWC Consent Decree is fair, reasonable, and adequate, and the TWC Consent Decree is also approved.

89. As to the Gold'n Plump Consent Decree, the Court rejects the objections from Mr. Hashi and Mr. Omar. The postmark on Mr. Hashi's envelope supports the EEOC's position that he did not timely file his claim form and is therefore not eligible to receive a monetary award under the Gold'n Plump Consent Decree. Mr. Omar's objection to his proposed monetary compensation is rejected because he has not shown that the EEOC's formula used to calculate individual monetary awards was unfair, unreasonable,

or inadequate. To the contrary, the Court concludes that the EEOC's proposed monetary allocations fairly, reasonably, and adequately balance the different interests of the class members.

90. Consequently, the Court concludes that the Gold'n Plump Consent Decree is fair, reasonable, and adequate, and it is approved. The Court also approves the EEOC's proposed monetary distributions.

91. The Court next approves Daud Class Counsel's request for $985,000 in attorneys' fees and costs. No one has objected to the amount of fees. The parties agreed to that amount in the settlement agreement, and the Court gives substantial deference to such an agreement. *See Cohn v. Nelson*, 375 F. Supp. 2d 844, 861 (E.D. Mo. 2005) (citations omitted). Although the award is nearly three times the amount of the monetary settlement, this comparison cannot be the basis for assessing the reasonableness of the fees because the significance of the equitable and injunctive relief cannot be quantified in terms of dollars. *See Little Rock Sch. Dist. v. Pulaski County Special Sch. Dist. No. 1*, 921 F.2d 1371, 1392 (8th Cir. 1990). The efforts of Daud Class Counsel were "indispensable to this measure of success." *See id.* Given the significant amount of work performed by the Daud Class Counsel in the past two and a half years, the amount of risk involved, and the benefits obtained by the Daud Settlement Class, the amount of fees requested is reasonable.

III. ORDER

Based on all the files, records, and proceedings herein, **IT IS HEREBY ORDERED** that:

92. The stay in this case is lifted.

93. Plaintiffs' Motion for Final Approval of Class Action Settlement and Motion for an Award of Attorneys' Fees, Costs, and Expenses to Class Counsel (Doc. No. 186) is **GRANTED**.

94. The request of the EEOC for final approval of the consent decree with Gold'n Plump (Doc. No. 6 in Civ. No. 08-5136) is **GRANTED**, and the parties are ordered to abide by the terms of that decree.

95. The request of the EEOC for final approval of the consent decree with TWC (Doc. No. 7 in Civ. No. 08-5137) is **GRANTED**, and the parties are ordered to abide by the terms of that decree.

96. TWC must pay claimants in accordance with the terms of the TWC Consent Decree.

97. Gold'n Plump must pay claimants in accordance with the terms of the Gold'n Plump Consent Decree and the EEOC's allocations for monetary relief.

98. The accommodation plan described in the settlement agreement is reasonable. In particular, the equitable relief detailed in paragraph 3 of the settlement agreement (Doc. No. 156-3 in Civ. No. 06-4013) provides the Daud Settlement Class members with reasonable accommodation for the ritual prayer

practices of their Muslim religion in accordance with Title VII, the Minnesota Human Rights Act, and the Wisconsin Fair Employment Law. Gold'n Plump and TWC need not accommodate the Daud Settlement Class members' Muslim ritual prayer practices beyond the requirements of the settlement agreement and consent decrees, and failure to provide accommodation of the Daud Settlement Class members' Muslim prayer practices beyond the terms of the settlement agreement and consent decrees will not violate Title VII, the Minnesota Human Rights Act, or the Wisconsin Fair Employment Law.

99. The Daud Named Plaintiffs and all Daud Settlement Class members are bound by the release of claims, as set forth in paragraph 9 of the settlement agreement (Doc. No. 156-3 in Civ. No. 06-4013).

100. The Daud Named Plaintiffs and all Daud Settlement Class members are permanently enjoined from commencing or prosecuting any action asserting any of the settled claims against any of the Released Parties, as those terms are defined in paragraph 9 of the settlement agreement (Doc. No. 156-3 in Civ. No. 06-4013). Any person or entity who knowingly violates this injunction shall pay the costs and attorneys' fees incurred by Gold'n Plump, TWC, or any other released party as a result of the violation.[2]

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[2] Daud Class Counsel included the second sentence of paragraph 100 in the Daud Named Plaintiffs' proposed order for final approval. Although this penalty is not included in the settlement

(Continued on following page)

101. Daud Class Counsel is awarded reimbursement of expenses, disbursements, and costs, including expert fees, mediator fees, court reporter fees, translation fees, and attorneys' fees, in the amount of $985,000.

102. This action is **DISMISSED WITH PREJUDICE**.

103. The Court shall retain jurisdiction over the construction, interpretation, implementation, and enforcement of the settlement agreement until the three-year term of the Gold'n Plump consent decree expires.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated this 31st day of March, 2009.

s/ Jeanne J. Graham
JEANNE J. GRAHAM
United States
Magistrate Judge

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agreement or consent decrees, no party objected to the proposed provision, and the Court will therefore include it.

UNITED STATES DISTRICT COURT

District of Minnesota

Aware Daud, Khadija Jama, Abdiazia Ali Abdi, Sahra Farah, Anab Ibrahim, Fowsiya Gelle, Kiin Farah, Lul Esse Hersi, Kasha Anna Sobiana, Waris Barre, Issak Horor, and the Equal Employment Opportunity Commission,

Plaintiffs,

V.

Gold'n Plump Poultry, Inc. and The Work Connection, Inc.,

Defendants.

JUDGMENT IN A CIVIL CASE

Case Number: 06-40213 (JJG)

☐ **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

☒ **Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED THAT:

1. The stay in this case is lifted.

2. Plaintiffs' Motion for Final Approval of Class Action Settlement and Motion for an Award of Attorneys' Fees, Costs and Expenses to Class Counsel (Doc. No. 186) is **GRANTED**.

3. The request of the EEOC for final approval of the consent decree with Gold'n Plump (Doc. No. 6 in Civ. No. 08-5136) is **GRANTED**, and the parties are ordered to abide by the terms of that decree.

4. The request of the EEOC for final approval of the consent decree with TWC (Doc. No. 7 in Civ. No. 08-5137) is **GRANTED**, and the parties are ordered to abide by the terms of that decree.

5. TWC must pay claimants in accordance with the terms of the TWC Consent Decree.

6. Gold'n Plump must pay claimants in accordance with the terms of the Gold'n Plump Consent Decree and the EEOC's allocations for monetary relief.

7. The accommodation plan described in the settlement agreement is reasonable. In particular, the equitable relief detailed in paragraph 3 of the settlement agreement (Doc. No. 156-3 in Civ. No. 06-4013) provides the Daud Settlement Class members with reasonable accommodation for the ritual prayer practices of their Muslim religion in accordance with Title VII, the Minnesota Human Rights Act, and the Wisconsin Fair Employment Law. Gold'n Plump and TWC need not accommodate the Daud Settlement Class members' Muslim ritual prayer practices beyond the requirements of the settlement agreement and consent decrees, and failure to provide accommodation of the Daud Settlement Class members' Muslim prayer practices beyond the terms of the settlement agreement and consent decrees will not violate Title VII, the Minnesota Human

Rights Act, or the Wisconsin Fair Employment Law.

8. The Daud Named Plaintiffs and all Daud Settlement Class members are bound by the release of claims, as set forth in paragraph 9 of the settlement agreement (Doc. No. 156-3 in Civ. No. 06-4013).

9. The Daud Named Plaintiffs and all Daud Settlement Class members are permanently enjoined from commencing or prosecuting any action asserting any of the settled claims against any of the Released Parties, as those terms are defined in paragraph 9 of the settlement agreement (Doc. No. 156-3 in Civ. No. 06-4013). Any person or entity who knowingly violates this injunction shall pay the costs and attorneys' fees incurred by Gold'n Plump, TWC, or any other released party as a result of the violation.

10. Daud Class Counsel is awarded reimbursement of expenses, disbursements, and costs, including expert fees, mediator fees, court reporter fees, translation fees, and attorneys' fees, in the amount of $985,000.

11. This action is **DISMISSED WITH PREJUDICE**.

12. The Court shall retain jurisdiction over the construction, interpretation, implementation, and enforcement of the settlement agreement until the three-year term of the Gold'n Plump consent decree expires.

March 31, 2009
Date

RICHARD D. SLETTEN, CLERK

s/ Janelle Zuech

(By) Janelle Zuech, Deputy Clerk

APPENDIX F

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Aware Daud, Khadija Jama, Abdiaziz Ali Abdi, Sahra Farah, Anab Ibrahim, Fowsiya Gelle, Kiin Farah, Lul Esse Hersi, Kasha Anna Sobiana, Waris Barre, Issak Horor, and the Equal Employment Opportunity Commission,	**Civ. No. 06-4013(JJG)**
Plaintiffs,	**ORDER**
v.	
Gold'n Plump Poultry, Inc. and The Work Connection, Inc.,	
Defendants.	

JEANNE J. GRAHAM, United States Magistrate Judge

This case is before the Court[1] on Plaintiffs' Motion to Require a Rule 7 Appeal Bond (Doc. No.

[1] All parties have consented to the exercise of jurisdiction by the undersigned United States Magistrate Judge pursuant to 28 U.S.C. § 636(c)(1).

220), The Work Connection's Motion for Joinder (Doc. No. 225), and Gold'n Plump Poultry, Inc.'s Motion in Support of Motion to Require a Rule 7 Appeal Bond (Doc. No. 229). For the reasons set forth below, the motions are granted.

On March 31, 2009, this Court approved a class action settlement of this case and entered judgment. Attorneys Jay Ramos and Barry Edwards subsequently appealed to the Eighth Circuit Court of Appeals on behalf of sixty-three "interested parties." Plaintiffs now move for an order requiring the appellants to file an appeal bond pursuant to Rule 7 of the Federal Rules of Appellate Procedure in the amount of $32,000. The Work Connection and Gold'n Plump seek to join that motion, and The Work Connection asks that an additional $3,100 be added to the bond amount.

Although an appeal normally divests a court of jurisdiction over a case, the Court retains jurisdiction to order a party to file a cost bond for appeal. *See Venen v. Sweet*, 758 F.2d 117, 121 n.2 (3d Cir. 1985). Federal Rule of Appellate Procedure 7 explicitly permits a district court to require an appellant to file a bond in an amount necessary "to ensure payment of costs on appeal." Fed. R. App. P. 7. The purpose of a Rule 7 bond "is to protect the appellee from the risk of nonpayment by the appellant, if the appellee wins the appeal." *Berry v. Deutsche Bank Trust Co. Ams.*, ___ F. Supp. 2d ___, 2009 WL 1110791, at *6 (S.D.N.Y. Apr. 6, 2009) (citing *Adsani v. Miller*, 139 F.3d 67, 75 (2d Cir. 1998)). It is not unusual for a court to require

class members appealing a class action settlement to file an appeal bond. *E.g.*, *Vaughn v. Am. Honda Motor Co., Inc.*, 507 F.3d 295, 300 (5th Cir. 2007); *Dehoyos v. Allstate Corp.*, 240 F.R.D. 269, 316 (W.D. Tex. 2007); *In re Ins. Brokerage Antitrust Litig.*, Civ. No. 04-5184, 2007 WL 1963063, at *3 (D.N.J. July 2, 2007). In deciding whether to require a bond, the Court may consider factors such as the appellants' ability to post a bond, the risk that appellants would not pay the appellees should they lose on appeal, the merits of the appellants' positions, and whether the appellants have acted in bad faith or vexatiously. *See Berry*, ___ F. Supp. 2d ___ 2009 WL 1110791, at *6 (citation omitted).

The Court finds that a cost bond is appropriate in this case. Although the appellants failed to respond to any of the motions, the Court will presume, based on its experience in this case, that they have limited financial ability to post a bond. However, the weight of this factor is counterbalanced by the Court's ability to reduce the amount requested and lessen any adverse effect on their appeal or their ability to post the bond. Moreover, the cost of the bond will be borne by sixty-three appellants, which alleviates the actual financial burden to each individual. The second factor weighs in favor of requiring a bond because there is a substantial risk that the appellants would not pay the appellees if they lose on appeal. The appellants are mostly short-term workers and recent emigrants to the United States who probably have not accumulated many assets. The third factor – the

strength of the appellants' position – strongly supports the issuance of a bond. Many of the appellants never objected to the class action settlement in the first instance, and of those who did, their objections were untimely and largely unsupported by any factual or legal basis. Fourth and finally, the appellants have not acted in bad faith or vexatiously.

The Court now turns to the amount of the cost bond. The costs on appeal that are taxable in district court include the preparation and transmission of the record and transcripts, any supersedeas bond premiums, the fee for filing the notice of appeal, fees for printing and witnesses, fees for copying papers obtained specifically for use in the appeal, and compensation for interpreters and translators. Fed. R. App. P. 39(e); 28 U.S.C. § 1290; *see In re Cardizem CD Antitrust Litig.*, 391 F.3d 812, 816 n.3 (6th Cir. 2004). A district court has discretion in setting the amount of the bond. *See* Fed. R. App. P. 7 advisory committee's note (1979).

Plaintiffs ask for a bond in the amount of $32,000, which they base primarily on the number of parties and issues involved in the appeal. Specifically, two groups of objectors are appealing a complex class settlement and an EEOC consent decree. Four discrete parties or groups of parties comprise the appellees, who have different interests and arguments, but who may all prevail on appeal. Eight law firms will need to be served. For ten of the eleven named Plaintiffs, and almost all the settlement class members, their counsel will need to communicate

with them via an interpreter or a translation service during the appeal. Thus far, Plaintiffs have paid more than $35,000 in interpretation and translation costs, and they estimate their cost during the appeal to reach at least $7,000.

The Work Connection asks to add another $3,100 to the amount suggested by Plaintiffs, representing the cost of the supersedeas bond premium that the Equal Employment Opportunity Commission is asking it to pursue.

The Court finds that a $25,000 cost bond is sufficient to cover the potential costs on appeal, including copying and producing briefs, records, and transcripts; translation services; and the supersedeas bond premium. In arriving at this number, the Court has considered the number of parties and issues involved, as well as similar amounts approved for other appeals of class action settlements, *see In re Insurance Brokerage Antitrust Litigation*, Civ. No. 04-5184, 2007 WL 1963063, at *5; *In re Compact Disc Minimum Advertised Price Antitrust Litigation,* No. MDL 1361, 2003 WL 22417252, at *2 (D. Me. Oct. 7, 2003); *In re Diet Drugs Products Liability Litigation,* No. MDL 1203, Civ. A. 99-20593, 2000 WL 1665134, at *5-6 (E.D. Pa. Nov. 6, 2000). The Court has also taken into account the limited financial means of the appellants, and notes that $25,000 divided by sixty-three is less than $400 a person. The absence of any objection by the appellants to the cost bond or the proposed amount was the Court's final consideration.

Based on all the files, records, and proceedings herein, **IT IS HEREBY ORDERED** that:

1. Plaintiffs' Motion to Require a Rule 7 Appeal Bond (Doc. No. 220) is **GRANTED IN PART** and **DENIED IN PART**;

2. The Work Connection's Motion for Joinder (Doc. No. 225) is **GRANTED IN PART** and **DENIED IN PART**;

3. Gold'n Plump Poultry, Inc.'s Motion in Support of Motion to Require a Rule 7 Appeal Bond (Doc. No. 229) is **GRANTED IN PART** and **DENIED IN PART**; and

4. Appellants must file a Rule 7 appeal cost bond in the amount of $25,000 within thirty days of this Order.

Dated this 28th of July, 2009.

s/ *Jeanne J. Graham*
JEANNE J. GRAHAM
United States Magistrate
Judge

APPENDIX G

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Aware Daud, Khadija Jama, Abdiaziz Ali Abdi, Sahra Farah, Anab Ibrahim, Fowsiya Gelle, Kiin Farah, Lul Esse Hersi, Kasha Anna Sobiana, Waris Barre, Issak Horor, and the Equal Employment Opportunity Commission,	**Civ. No. 06-4013(JJG)** **Civ. No. 08-5136 (JJG)**
Plaintiffs,	**ORDER**
v.	
Gold'n Plump Poultry, Inc. and The Work Connection, Inc.,	
Defendants.	

JEANNE J. GRAHAM, United States Magistrate Judge

Presently before the Court[1] are appellants' Motion to Modify Order for Bond (Doc. No. 240 in Civ.

[1] All parties have consented to the exercise of jurisdiction by the undersigned United States Magistrate Judge pursuant to 28 U.S.C. § 636(c)(1).

No. 06-4013; Doc. No. 31 in Civ. No. 08-5136), Motion for Extension of Time (Doc. No. 241 in Civ. No. 06-4013; Doc. No. 32 in Civ. No. 08-5136), and Rule 7.1(f) Motion (Doc. No. 247 in Civ. No. 06-4013; Doc. No. 38 in Civ. No. 08-5136). For the reasons set forth below, the motions are denied.

These cases are currently on appeal to the Eighth Circuit Court of Appeals. Although an appeal normally divests a court of jurisdiction over a case, a court retains jurisdiction to order a party to file a bond for costs on appeal. *See* Fed. R. App. P. 7; *Venen v. Sweet*, 758 F.2d 117, 121 n.2 (3d Cir. 1985). A logical corollary is that a court retains jurisdiction to consider a motion relating to a previously-ordered bond for costs on appeal, as long as the bond itself is not the subject of the appeal. Here, while Plaintiffs have moved to dismiss the appeal based on the appellants' failure to pay the bond, no party has appealed the issuance of the bond or its amount, and the Court concludes it has jurisdiction to consider appellants' motions.

The Court denies the motion to modify the appeal bond on three independent grounds: first, because it is an untimely request for reconsideration; second, because it fails to comply with D. Minn. LR 7.1; and third, because the relief sought is not supported by facts or law. The motion for extension of time is similarly denied on multiple grounds; the motion does not comply with D. Minn. LR 7.1; an extension is not warranted by the present record or under the authority cited by appellants; and the content of the

one-sentence motion does not even correspond with its caption, rendering the motion nonsensical. Finally, appellants' motion to file a surreply under D. Minn. LR 7.1(f) is denied because there is no need for further briefing on these matters.

Accordingly, **IT IS HEREBY ORDERED** that:

1. The Motion to Modify Order for Bond (Doc. No. 240 in Civ. No. 06-4013; Doc. No. 31 in Civ. No. 08-5136) is **DENIED**;

2. The Motion for Extension of Time (Doc. No. 241 in Civ. No. 06-4013; Doc. No. 32 in Civ. No. 08-5136) is **DENIED**; and

3. The Rule 7.1(f) Motion (Doc. No. 247 in Civ. No. 06-4013; Doc. No. 38 in Civ. No. 08-5136) is **DENIED**.

Dated: September 28, 2009.

s/ Jeanne J. Graham
JEANNE J. GRAHAM
United States Magistrate Judge

APPENDIX H

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No: 09-2398

Aware Daud, et al.,

Appellees

Farah Ade Mohamed, et al.,

Appellants

v.

Gold'n Plump Poultry, Inc. and The Work Connection, Inc.,

Appellees

No: 09-2399

Equal Employment Opportunity Commission, et al.,

Appellees

Rashid Mohamed Osman, et al.,

Appellants

v.

Gold'n Plump Poultry, Inc.,

Appellee

Appeal from U.S. District Court for the District of Minnesota – Minneapolis
(0:06-cv-04013-JJG)
(0:08-cv-05136-JJG)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

January 15, 2010

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth
Circuit.

/s/ Michael E. Gans